

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----	X	
RICARDO WALKER, on behalf of himself	:	
and all others similarly situated,	:	
	:	No.: 1:18-CV-04609-ENV-SM
Plaintiff,	:	
	:	
v.	:	
	:	
PASSION FOOD FOUR, LLC D/B/A	:	
ACADIANA,	:	
	:	
	:	
Defendant.	:	
-----	X	

**DEFENDANT PASSION FOOD FOUR, LLC’S
MOTION TO DISMISS COMPLAINT**

Defendant Passion Food Four, LLC’s, in accordance with Rule 12(b)(2) of the Federal Rules of Civil Procedure and through its undersigned counsel, hereby moves the Court for an order dismissing Plaintiffs’ Complaint (the “Complaint”) filed by Plaintiff Ricardo Walker. A brief in support of this motion is submitted herewith.

1. Plaintiff Ricardo Walker asserts that Defendant Passion Food Four, LLC’s (“Passion Food”) website, www.acadianarestaurant.com, is not equally accessible to blind and visually-impaired consumers in violation of the Americans with Disabilities Act (“ADA”) and the Human Rights Laws of the State of New York and New York City.

2. It is undisputed that Passion Food is a corporation organized under the law of the District of Columbia with its principal place of business and registered agent in Washington D.C. (Compl. at ¶ 18). Furthermore, Passion Food does not own or operate any restaurants in New York, nor does it advertise in New York. (See Exhibit A of Memorandum In Support of Motion to Dismiss, Wizenberg Aff. at ¶¶ 6-8).

3. Personal jurisdiction over Passion Food does not exist under New York law and this Court's exercise of jurisdiction over Passion Food would not satisfy federal due process requirements.

4. Ultimately, Passion Food is a restaurant located in the District of Columbia and does not transact any business in New York. Passion Food also does not advertise in New York, nor does it serve or deliver any food within New York. There is no jurisdiction over Passion Food for it to be brought into a lawsuit in the State of New York. Importantly, Plaintiff's Complaint does not even allege Passion Food does business in New York, or that Plaintiff ever visited Passion Food's restaurant in the District of Columbia.

WHEREFORE, the Defendant, Passion Food Four, LLC, respectfully requests that this Court enter an Order granting Defendant's motion and dismissing Plaintiff's Complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, and providing any further relief deemed appropriate.

Dated: November 5, 2018

Respectfully submitted,

/s/ Ryan T. Benson

Ryan T. Benson

Attorney for Defendant, Passion Food Four, LLC

Ryan T. Benson (Admitted *Pro Hac Vice*)
IL ARDC # 6312338
O'HAGAN MEYER, LLC
One East Wacker Drive
Suite 3400
Chicago, IL 60601
Ph: 312-422-6100
Fx: 312-422-6110
rbenson@ohaganmeyer.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 26, 2018, all counsel of record who are deemed to have consented to electronic service are being served a true and correct copy of the foregoing document using the Court's CM/ECF system:

C.K. Lee
Anne Seelig
Lee Litigation Group, PLLC
30 East 39th Street
Second Floor
New York, NY 10016
cklee@leelitigation.com

/s/ Ryan T. Benson
Ryan T. Benson
ARDC No. 6312338
O'Hagan Meyer LLC
One East Wacker Drive, Suite 3400
Chicago, Illinois 60601
312.422.6100 –T 312.422.6110 – F
rbenson@ohaganmeyer.com